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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,902	11/24/2003	Alan L. Billings	930034-2041	5301
20999	7590	07/09/2008	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151				AFTERGUT, JEFF H
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
07/09/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/720,902	BILLINGS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeff H. Aftergut	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 April 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.

4a) Of the above claim(s) 7 and 9-15 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6, 8, 16-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-6, 9 and 16-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Wicker (US 3368933) for the same reasons as expressed in the Office action dated 1-7-08, paragraph 3 (the following added only for further explanation).

As expressed in paragraph 3 of the previous Office action, Wicker clearly taught a layer of Mylar material was disposed on the base structure of a woven material and secured thereto with adhesive. The claims as presented are related to an apparatus and the language relating to the manufacturing operations to make the apparatus are of little or no patentable import to the claimed structure (or device). In this case, the language that "a liquid polymeric resin coating applied and cured on the outside of said base structure" does not require a liquid material be applied and cured on the outside of the base structure, rather the finished structure must have a distinct layer of cured material deposited on the outside of the base therein. Here, Wicker clearly taught a layer of Mylar on the exterior surface of the base which was secured thereto with adhesive. Mylar is a curable polymeric material and clearly forms a layer on the surface of the base material. The claims as presented do not exclude the use of adhesive to bond the cured layer of Mylar to the base to form a surface layer thereon. The applicant is additionally provided herewith with a definition of "coating" from dictionary.com.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-6, 8, and 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch (US 5857605) in view of Wicker for the same reasons as expressed in paragraph 5 of the Office action dated 1-7-08.
5. Claims 1-6, 8, and 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Billings (US 6470944) in view of Hansen (US 2002/0102894) and McGahern et al (US 6428874) for the same reasons as expressed in the Office action dated 1-7-08, paragraph 6.

***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-6, 8 and 16-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,470,944 in view of McGahern et al and Hansen for the same reasons as previously discussed.

The reference to Billings is discussed in paragraph 6 of the Office action dated 1-7-08 and applicant is referred to the same for a complete discussion of the reference. the introduction of grooves into the coating provided on the surface of Billings would have been obvious to one skilled in the art at the time the invention was made in light of the teachings of McGahern and Hansen.

***Response to Arguments***

8. Applicant's arguments filed 4-7-08 have been fully considered but they are not persuasive.

Regarding the rejection of the claims under 35 USC 102 with the Wicker reference, the applicant essentially argues that the adhesive coating does not provide a curable (or cured) exterior layer on the outer surface of the base as it is not a "coating" as defined in the claims. This has not been found to be persuasive. The applicant is advised that the reference to Wicker clearly taught that a Mylar layer was provided on the exterior surface therein. Mylar is a curable material and clearly, Note that the Office did not "equate the adhesive used in Wicker to the liquid polymeric resin" of the instant invention as this was required to form an exterior layer on the belt base and have a plurality of grooves formed therein. The Office action clearly expressed that the grooves 84a were formed in the Mylar layer therein and thus clearly suggested that the "layer"

formed on the exterior was in fact the Mylar and not the adhesive material. Note that Mylar is a curable material. the claims as presented DO NOT exclude an adhesive being used to secure the coating (“layer of material covering the base”) of curable material to the base structure and as such, the use of adhesive to secure the curable Mylar coating satisfies the claimed invention as presented. The claims are simply not commensurate in scope with the applicant’s presented arguments.

Regarding the reference to Welch, the applicant argues that the friction strips are glued in the regions cut away leaving there between the high friction rubber strips. The applicant is advised again that there is no exclusion of the use of adhesive material between the base and the coating and that rubber is clearly a curable (crosslinked) material which formed the layer therein. the applicant is advised again that the claim is not commensurate in scope with the arguments and that there is no exclusion of an adhesive material between the coating and the base material. Note regarding the requirement for a “liquid polymeric resin” that the claim is an apparatus claim and that the process of applying the liquid and curing the same do not alter the finished product assembly so long as the material of the coating (the layer) is one which is curable. In this case the material which is applied via the adhesive is a rubber (a curable material).

Regarding the prior art rejection as it relates to Billings et al, the applicant is advised as previous noted that Billings et al suggested complete impregnation of the layers which would have resulted in the formation of an exterior “coating” or layer on the base fabric material which infiltrated the nonwoven needled layer which was provided therein. The applicant does not address this as previously pointed out by the Office and

thus must concede that the same is correct. The formation of grooves in the layer of Billings would have been obvious to one of ordinary skill in the art for the reasons previously supplied.

No claims are allowed.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:30-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeff H. Aftergut/  
Primary Examiner  
Art Unit 1791

JHA  
July 6, 2008